

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

NATHANIEL DANTE RICE, )  
                            )  
                            )  
Petitioner,             )  
                            )  
                            )  
v.                         ) 1:11CV1148  
                            ) 1:02CR153-1  
UNITED STATES OF AMERICA, )  
                            )  
                            )  
Respondent.             )

ORDER

On May 19, 2014, the United States Magistrate Judge's Recommendation was filed and notice was served on the parties pursuant to 28 U.S.C. § 636. Petitioner filed objections [Doc. #135] to the Recommendation within the time limit prescribed by Section 636. The Government did not file a response to Petitioner's objections. The Court has reviewed Petitioner's objections *de novo* and finds they do not change the substance of the United States Magistrate Judge's Recommendation [Doc. #129], which is affirmed and adopted.

IT IS THEREFORE ORDERED that Petitioner's Motion to Vacate, Set Aside or Correct Sentence [Doc. #91] is GRANTED, that the sentence set out in the Judgment [Doc. #46] is VACATED, and that Count Two of the Superseding Indictment [Doc. #12] is DISMISSED. To the extent Petitioner made any payments toward the \$100 special assessment for Count Two, those amounts should be returned to him.

The Clerk is directed to set this matter for resentencing. Petitioner remains in custody, and the United States Attorney is directed to produce Petitioner for the resentencing hearing. The Probation Office is directed to prepare a Supplement to the Presentence Investigation

Report in advance of the hearing. Counsel will be appointed to represent Petitioner at the resentencing hearing.

This, the 15<sup>th</sup> day of July, 2014.



\_\_\_\_\_  
United States District Judge